

(4) has publicly committed itself to, and is making demonstrable progress in—

(A) establishing an independent judiciary;

(B) respecting internationally recognized human rights and basic freedoms as set forth in the Universal Declaration of Human Rights, to which Cuba is a signatory nation;

(C) effectively guaranteeing the rights of free speech and freedom of the press;

(D) permitting the reinstatement of citizenship to Cuban-born nationals returning to Cuba;

(E) organizing free and fair elections for a new government—

(i) to be held within 1 year after the transition government assumes power;

(ii) with the participation of multiple independent political parties that have full access to the media on an equal basis, including (in the case of radio, television, or other telecommunications media) in terms of allotments of time for such access and the times of day such allotments are given; and

(iii) to be conducted under the supervision of internationally recognized observers, such as the Organization of American States, the United Nations, and other elections monitors;

(F) assuring the right to private property;

(G) taking appropriate steps to return to United States citizens and entities property taken by the Government of Cuba from such citizens and entities on or after January 1, 1959, or to provide equitable compensation to such citizens and entities for such property;

(H) having a currency that is fully convertible domestically and internationally;

(I) granting permits to privately owned telecommunications and media companies to operate in Cuba; and

(J) allowing the establishment of an independent labor movement and of independent social, economic, and political associations;

(5) does not include Fidel Castro or Raul Castro;

(6) has given adequate assurances that it will allow the speedy and efficient distribution of assistance to the Cuban people; and

(7) permits the deployment throughout Cuba of independent and unfettered international human rights monitors.

SEC. 26. REQUIREMENTS FOR A DEMOCRATICALLY ELECTED GOVERNMENT.

For purposes of this title, a democratically elected government in Cuba, in addition to continuing to comply with the requirements of section 25, is a government in Cuba which—

(1) results from free and fair elections—

(A) conducted under the supervision of internationally recognized observers;

(B) in which opposition parties were permitted ample time to organize and campaign for such elections, and in which all candidates in the elections were permitted full access to the media;

(2) is showing respect for the basic civil liberties and human rights of the citizens of Cuba;

(3) has established an independent judiciary;

(4) is substantially moving toward a market-oriented economic system based on the right to own and enjoy property;

(5) is committed to making constitutional changes that would ensure regular free and fair elections that meet the requirements of paragraph (2); and

(6) has returned to United States citizens, and entities which are 50 percent or more beneficially owned by United States citizens, property taken by the Government of Cuba from such citizens and entities on or after January 1, 1959, or provided full compensation in accordance with international law standards and practice to such citizens and entities for such property.

PART C—PROTECTION OF AMERICAN PROPERTY RIGHTS ABROAD

SEC. 31. EXCLUSION FROM THE UNITED STATES OF ALIENS WHO HAVE CONFISCATED PROPERTY CLAIMED BY UNITED STATES PERSONS.

(a) ADDITIONAL GROUNDS FOR EXCLUSION.—Section 212(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) is amended by adding at the end the following:

“(D) ALIENS WHO HAVE CONFISCATED AMERICAN PROPERTY ABROAD AND RELATED PERSONS.—(i) Any alien who—

“(I) has confiscated, or has directed or overseen the confiscation of, property the claim to which is owned by a United States person, or converts or has converted for personal gain confiscated property, the claim to which is owned by a United States person;

“(II) traffics in confiscated property, the claim to which is owned by a United States person;

“(III) is a corporate officer, principal, or shareholder of an entity which the Secretary of State determines or is informed by competent authority has been involved in the confiscation, trafficking in, or subsequent unauthorized use or benefit from confiscated property, the claim to which is owned by a United States person, or

“(IV) is a spouse or dependent of a person described in subclause (I),

is excludable.

“(ii) The validity of claims under this subparagraph shall be established in accordance with section 303 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995.

“(iii) For purposes of this subparagraph, the terms ‘confiscated’, ‘traffics’, and ‘United States person’ have the same meanings given to such terms under section 4 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals seeking to enter the United States on or after the date of enactment of this title.

SEC. 32. LIABILITY FOR TRAFFICKING IN CONFISCATED PROPERTY CLAIMED BY UNITED STATES PERSONS.

(a) CIVIL REMEDY.—(1) Except as provided in paragraphs (2) and (3), any person or government that traffics in property confiscated by a foreign government shall be liable to the United States person who owns the claim to the confiscated property for money damages in an amount which is the greater of—

(A) the amount certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949, plus interest at the commercially recognized normal rate;

(B) the amount determined under section 33(a)(2); or

(C) the fair market value of that property, calculated as being the then current value of the property, or the value of the property when confiscated plus interest at the commercially recognized normal rate, whichever is greater.

(2) Except as provided in paragraph (3), any person or government that traffics in confiscated property after having received (A) notice of a claim to ownership of the property by the United States person who owns the claim to the confiscated property, and (B) a copy of this section, shall be liable to such United States person for money damages in an amount which is treble the amount specified in paragraph (1).

(3)(A) Actions may be brought under paragraph (1) with respect to property confiscated before, on, or after the date of enactment of this title.

(B) In the case of property confiscated before the date of enactment of this title, no

United States person may bring an action under this section unless such person acquired ownership of the claim to the confiscated property before such date.

(C) In the case of property confiscated on or after the date of enactment of this title, in order to maintain the action, the United States person who is the plaintiff must demonstrate to the court that the plaintiff has taken reasonable steps to exhaust all available local remedies.

(b) JURISDICTION.—Chapter 85 of title 28, United States Code, is amended by inserting after section 1331 the following new section:

“§1331a. Civil actions involving confiscated property

“The district courts shall have exclusive jurisdiction, without regard to the amount in controversy, of any action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995.”

(c) WAIVER OF SOVEREIGN IMMUNITY.—Section 1605 of title 28, United States Code, is amended—

(1) by striking “or” at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting “; or”; and

(3) by adding at the end the following:

“(7) in which the action is brought with respect to confiscated property under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995.”

SEC. 33. DETERMINATION OF CLAIMS TO CONFISCATED PROPERTY.

(a) EVIDENCE OF OWNERSHIP.—For purposes of this title, conclusive evidence of ownership by the United States person of a claim to confiscated property is established—

(1) when the Foreign Claims Settlement Commission certifies the claim under title V of the International Claims Settlement Act of 1949, as amended by subsection (b); or

(2) when the claim has been determined to be valid by a court or administrative agency of the country in which the property was confiscated.

(b) AMENDMENT OF THE INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949.—Title V of the International Claims Settlement Act of 1949 is amended by adding at the end the following new section:

“ADDITIONAL CLAIMS

“SEC. 514. Notwithstanding any other provision of this title, a United States national may bring a claim to the Commission for determination and certification under this title of the amount and validity of a claim resulting from actions taken by the Government of Cuba described in section 503(a), whether or not the United States national qualified as a United States national at the time of the Cuban government action, except that, in the case of property confiscated after the date of enactment of this section, the claimant must be a United States national at the time of the confiscation.”

(c) CONFORMING REPEAL.—Section 510 of the International Claims Settlement Act of 1949 (22 U.S.C. 1643i) is repealed.

NOTICE OF HEARING

COMMITTEE ON SMALL BUSINESS

Mr. BOND. Mr. President, I wish to announce that the Committee on Small Business will hold a hearing on Wednesday, March 8, 1995, at 9:30 a.m., in room 428A of the Russell Senate Office Building. The subject of the hearing is the Regulatory Flexibility Amendment Act.

For further information, please contact Louis Taylor at 224-5175.